



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**

**CIVIL APPEAL NO. 80 OF 2008**

**JOEL KIMITHU MWANGI.....APPELLANT**

**VERSUS**

**SHADRACK KUIRA.....RESPONDENT**

***(Being appeal against the judgment of Hon. S. Ndambuki Ag. Principal Magistrate in Murang'a Senior Principal Magistrate's Civil Case No.103 of 2006 dated 28<sup>th</sup> September 2007)***

**JUDGMENT**

This judgment is the outcome of the appeal against the judgment and order of Hon. S. Ndambuki, Ag. Principal Magistrate delivered on 28<sup>th</sup> September 2007 vide **Murang'a P.C.C.C. No. 103 of 2006**. This appeal had previously been heard and determined by the Hon. Mr. Justice Makhandia. The judgment of the Honourable judge was set aside pursuant to an application filed under *Order XLI rule 18* of the Civil Procedure Rules. The appeal was then remitted for fresh rehearing. When the appeal came up for hearing, learned counsels appearing in the matter recorded a consent order to have the appeal disposed of by submissions.

I have considered the submissions filed by the Appellant. The respondent for some strange reasons did not file his submissions. The history of this appeal is aptly summarized in my ruling delivered on 19<sup>th</sup> November 2010 and I do not intend to reproduce the same here. The Appellant was a fare paying passenger in motor vehicle registration No. KAP 456P, the property of the respondent. The appellant is said to have fallen off the aforesaid motor vehicle while alighting. It is said the driver of the said motor vehicle drove off before ensuring that the Appellant had safely alighted. The Appellant then filed a compensatory suit before the Muranga Principal Magistrate's Court. The suit was dismissed on the basis that the Plaintiff had failed to produce evidence of proof of ownership of the motor vehicle. The Appellant being aggrieved preferred this appeal.

On appeal, the Appellant put forward the following grounds in his Memorandum:

1. ***The Learned Ag. Principal Magistrate erred in law and fact in her finding that the ownership of the motor vehicle KAP 456H was not proved to vest in the respondent on a balance of probabilities.***
  
2. ***The Learned Magistrate erred in law and fact in finding that liability for the accident had not been proved against the respondent.***

0. ***The Learned Magistrate misdirected herself in fact in failing to assess the damages payable to the appellant in case she was subsequently found to be wrong.***
  
0. ***The Learned Magistrate should have found that the respondent's deliberate failure to adduce evidence in his own case rendered the statement of defence unproved and the plaintiff's evidence unchallenged.***

In my view I think the question which commends itself to be decided on appeal relates to the evidence of ownership of motor vehicle registration No. KAP 456H. According to the learned Ag. Principal Magistrate, the Plaintiff (Appellant) had failed to produce records from the registrar of motor vehicles to prove ownership of the vehicle. The learned Magistrate proceeded to dismiss the suit without determining the question of quantum. I have re-examined the evidence tendered by the Plaintiff. In cross-examination, the Appellant admitted before the trial court that he had no documentary evidence from the Registrar of motor vehicles to produce to prove ownership of the motor vehicle. The Appellant has urged this court to find that the Police abstract form presented in evidence was sufficient to establish ownership of the said motor vehicle. In paragraphs 3 of the Defence, the Respondent specifically denied that he was the owner of the motor vehicle. It was therefore incumbent upon the Appellant to establish that fact, but he did not do so yet he was put on notice. In the case of **Ihuranira Karauri –Vs= Agnes Ncheche C.A. No. 192 of 1996** the Court of Appeal held *inter alia*:

***That the production of a police abstract in the absence of an official search from the registrar of motor vehicles is not sufficient proof of ownership of a motor vehicle.***

With respect, I think the learned Ag. Principal Magistrate fell into error. Under *Section 8* of the Traffic Act it is clearly stated that a person whose name a vehicle is registered shall unless the contrary is proved, be deemed to be the owner of the vehicle. The Plaintiff tendered the evidence of a Police abstract form which indicated the Respondent was the owner of the motor vehicle. The Police abstract form was produced without any objection. There was no other evidence tendered to controvert the document. In my view the Police abstract form was prima facie evidence that the Respondent was the registered owner of motor vehicle registration No. KAP 456H. In short, a certificate of search from the Registrar of Motor Vehicles cannot be said to be the only piece of evidence to prove ownership. It is apparent from the record that the trial Magistrate did not seriously consider the evidence relating to liability and quantum. A fair order in the circumstances is to allow the appeal and remit back the case for retrial before another Magistrate other than Hon. S. Ndambuki.

In the end the appeal is allowed. The order dismissing the suit is set aside. The suit is remitted back to the Principal Magistrate's Court, Murang'a for hearing *denovo* before any other magistrate other than Hon. S. Ndambuki. Costs of the appeal to be met by the Respondent.

***Dated and delivered at Nyeri this 18<sup>th</sup> day of November 2011.***

**J. K. SERGON**  
**JUDGE**

In open court in the presence of Mr. Toyo holding brief Nyanjui for the Respondent and Mr. Kirubi holding brief Mbuthia for Appellant.